IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

MFA.No. 1066 of 2002(B)

AGAINST THE ORDER IN W.C.C.No.75/97 BY THE COMMISSIONER FOR WORKMEN'S COMPENSATION, THIRUVANANTHAPURAM.

APPELLANT: APPELLANT/1ST OPPOSITE PARTY:

MANIYAN, KUNNUVILA VEEDU,
AYIROOR, ARUVIPPURAM, PERUMKADAVILA P.O.,
NEYATTINKARA, THIRUVANANTHAPURAM.

BY ADV. SRI.R.T.PRADEEP

RESPONDENTS: APPLICANT AND 11ND OPPOSITE PARTY:

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1. N. VELAYUDHAN NAIR, S/O. NEELAKANTA
PILLAI, USHA NIVA, THATHIYOOR,
MANCHAVILAKAM P.O., NEYYATTINKARA,
THIRUVANANTHAPURAM DIST.

2. M/S. NEW INDIA ASSURANCE COMPANY LTD.,
DIVISIONAL OFFICE, KOTTARATHIL BUILDING,
ANNEXE, PALAYAM, THIRUVANANTHAPURAM.

BY ADV. SRI.E.R.VENKATESWARAN (R2)
BY ADV. SRI.NAGRAJ NARAYANAN (R1)

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No.1066 of 2002

Dated this the 28th June, 2007.

J U D G M E N T

The first opposite party in W.C.C.No.75/1997, on the file of the Commissioner for Workmen's Compensation, Thiruvananthapuram, is the appellant. The first respondent filed the petition under Section 22 of the Workmen's Compensation Act, claiming compensation impleading the appellant and the insurer. It was averred that first respondent was employed by the appellant as a loading and unloading worker in his lorry bearing Registration No.KBE 3135. It was also averred that while he was engaged in loading of granite stone in the above lorry at Vellachiprara on 14.4.1996, he sustained injuries during the course of his employment. The respondent claimed compensation for the employment injuries sustained by him. The appellant filed a written statement denying the employer-employee relationship. But he had admitted that he is the registered owner of the lorry bearing Registration No.KBE 3135. The insurer also denied its liability. The Commissioner, after analysing the evidence, found that that the first respondent was an employee of the appellant. He was a loading and unloading worker of the lorry bearing Registration No. KBE 3135 owned by the appellant, and he sustained injuries during the course of his employment. Since the appellant

gave evidence to the effect that five years prior to his date of examination, he sold away the vehicle and gave all papers to the purchaser, and he is not in possession to produce the copy of the policy, the Commissioner exonerated the Insurer, and directed the appellant to pay the compensation. Challenging that order, this appeal is filed.

2. The learned counsel appearing for the appellant has argued that the finding of the Commissioner that first respondent was his workman is not based on any evidence. It is also argued that the first respondent sustained employment injury is also not correct. The quantum of compensation awarded is also disputed. It is argued that the vehicle was covered with a valid policy of insurance issued by the second respondent, New India Assurance Company Ltd., and as such, even if it is found that the first respondent is entitled to get any compensation, the Insurer ought to have been directed to pay that amount. The Commissioner, after analysis of the oral evidence, found that the first respondent was employed by the appellant. That is essentially a finding of fact based on good evidence. I do not find any reason to interfere with that award.

3. I have carefully gone through the various heads under which the compensation was awarded. That also does not require any interference. Hence, I confirm the quantum of compensation awarded also.

4. The appellant has argued that the vehicle was covered with a valid policy of insurance. He produced a copy of the policy issued by the second respondent bearing Registration No.3176050409116. It shows that the vehicle bearing Registration No.KBE 3135 was covered with a valid policy of insurance, with effect from 10.10.1995 till 9.10.1996.

5. The learned counsel appearing for the second respondent, Insurer, has argued that though the policy was in respect of the vehicle involved in this accident, the policy was issued to Sri.K.M.Badusha of Muvattupuzha, and was not issued to the appellant. It is true that the name of the insured is stated as K.M.Badusha. The learned counsel for the appellant has submitted that the appellant had purchased the vehicle from K.M.Badusha, and subsequently, the ownership was transferred and he is not in a position to produce the RC Book, as the vehicle has been sold years back.

6. In view of the provisions contained under section 157 of the Motor Vehicles Act, even if the insurance policy stands in the name of a previous owner, the Insurer is liable to indemnify the subsequent purchaser. In **Ashraf v. Fathima** (2004 (2) KLT 598), it was held that even if a transfer of vehicle was not intimated to the Insurer and not recorded in the R.C. Book, the Insurer is liable. It is also to be noted that the lorry is a movable sale, which is governed by the Sale of Goods Act, and not by the provisions of the Motor Vehicles Act. So, even if the change of ownership is not noted in the R.C. Book, and even if policy stands in the name of the Original owner, in view of the provision contained in Section 15 of the Motor Vehicles Act, there was an automatic transfer, and the transferee is entitled to claim the benefit. Hence, that part of the order of the Commissioner is liable to be set aside. I hold that the Insurer is liable to pay the amount.

7. It is submitted by the learned counsel for the appellant that the appellant had deposited the amount due under the Order, and if there is any further amount is to be paid, the appellant will deposit the same, and he may be allowed to recover the amount by executing this order itself.

In the result, the appeal is allowed in part. The evidence of the Commissioner that first respondent was a workman of the appellant and was entitled to get compensation is confirmed. The quantum of compensation awarded is also confirmed. That part of the Order exonerating the second respondent, Insurer, is set aside. The Insurer is directed to indemnify the appellant. The Insurer shall reimburse the appellant, any amount he had already paid as per the Workmen's Compensation Court and any further amount to pay. In case, the Insurer fails or refuse to reimburse the appellant, within three months from the date of receipt of a copy of this judgment, the appellant is entitled to recover the amount in execution of this judgment itself.

C.M.P.No.6605/2002 in M.F.A.No.1066/2002 shall stand dismissed.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No. 1066 of 2002

J U D G M E N T

Dated:28th June, 2007.